



JUDICIAL INVESTIGATION COMMISSION

WV Judicial Tower - Suite 700 A
4700 MacCorkle Ave., SE
Charleston, West Virginia 25304
(304) 558-0169

February 28, 2024

Re: JIC Advisory Opinion 2024-07

Dear :

The Commission has considered your recent request for an advisory opinion. You are running for judge in the May 2024 election. Your request asks the Commission to render an advisory opinion on your opponent, his or her campaign committee and/or some unidentified third party. You also want clarification on JIC Advisory Opinions 2018-22 and 2019-15 which address a candidate's duty to disavow an alleged false claim made by a third-party PAC.

Rule 2.13 of the Rules of Judicial Disciplinary Procedure governs the Commission and the release of advisory opinions and states in pertinent part:

- (a) The Administrative Director of the Courts or a judge may by written request of Disciplinary Counsel seek an advisory opinion as to whether certain specific actions contemplated may constitute a violation of the Code of Judicial Conduct. . . .
- (c) The Commission may render in writing such advisory opinion as it may deem appropriate. . . .

As stated, the Rule does not require the Commission to render a formal opinion for every request. Although not specifically stated, it has been a long-standing rule of the Commission to consider advisory opinion requests from judicial candidates since Canon 4 makes the Code of Judicial Conduct applicable to judicial candidates as well. Likewise, the Commission also has a well-established rule that it will only render opinions on the conduct of the requestor himself/herself and not on behalf of someone

else. Therefore, the Commission has unanimously declined to answer your request for a formal opinion since you are asking about the conduct of someone other than yourself.

The Commission also unanimously voted not to answer your question concerning JIC Advisory Opinions 2018-22 and 2019-15 pertaining to fact versus opinion since we believe it is self-explanatory. JIC Advisory Opinion 2019-15 clarified JIC Advisory opinion 2018-22 to say the following:

[T]he obligation to disavow is not triggered until the following criteria are met: (a) the statement must involve a fact and not an opinion; (b) the fact must be substantive and significant; (c) the misstatement must actually be false or a material misrepresentation; and (d) the judicial candidate has knowledge of the third-party or PAC's factual statement and its falsity.

Id. at 2.

Thank you for your inquiry. Please do not hesitate to contact the Commission should you have any further questions, comments or concerns.

Sincerely,



Alan D. Moats, Chairperson
Judicial Investigation Commission